

PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

Cullen & Co
GPO Box 1074,
BRISBANE QLD 4001

PCT

WRITTEN OPINION
(PCT Rule 66)

Date of mailing
(day/month/year)

24 MAY 2004

Applicant's or agent's file reference
02701PC/GC/RG

REPLY DUE

within **ONE MONTH**
from the above date of mailing

International Application No.
PCT/AU2003/000642

International Filing Date (day/month/year)
26 May 2003

Priority Date (day/month/year)
11 July 2002

International Patent Classification (IPC) or both national classification and IPC
Int. Cl. 7 C09K 17/02, 17/04, 17/06, 101:00, 109:00, C05D 11/00

Applicant

TREERS, Huw et al

1. This written opinion is the **second** drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I Basis of the opinion
- II Priority
- III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV Lack of unity of invention
- V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI Certain documents cited
- VII Certain defects in the international application
- VIII Certain observations on the international application

3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:
11 November 2004

The applicant is hereby invited to reply to this opinion.

When? See the Reply Due date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the Final Date by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. If no response is filed by 1 month before the Final Date, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least 3 months before the Final Date by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3.
For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

Name and mailing address of the IPEA/AU

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International application No.
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I. Basis of the opinion**1. With regard to the elements of the international application:**^{*}

the international application as originally filed.

the description, pages 1-26, 30 (abstract), as originally filed,
pages , filed with the demand,
pages , received on with the letter of

the claims, pages , as originally filed,
pages , as amended under Article 19,
pages , filed with the demand,
pages 27-29 , received on 12 May 2004 with the letter of 12 May 2004

the drawings, pages 1/3-3/3 , as originally filed,
pages , filed with the demand,
pages , received on with the letter of

the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
 the language of publication of the international application (under Rule 48.3(b)).
 the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

contained in the international application in printed form.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority in written form.
 furnished subsequently to this Authority in computer readable form.
 The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
 The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

the description, pages
 the claims, Nos.
 the drawings, sheets/fig.

5. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"

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V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims 1-20	YES
	Claims	NO
Inventive step (IS)	Claims	YES
	Claims 1-20	NO
Industrial applicability (IA)	Claims 1-20	YES
	Claims	NO

2. Citations and explanations**CITATIONS**

D1. AU 683611 (10050/97)

D2. JP 60127286

INVENTIVE STEP: Claims 1-20

In distinguishing the present invention from the cited art, the Attorney asserts that the claims have been amended to remove andesite from the soil additive. However, it should be noted that as presently drafted, claims 1 and 20 encompass soil additives containing an infinite number of other source rocks in addition to basalt, limestone, dolomite and claystone.

In any case the amended claims do not involve an inventive step in the light of the above citations. The claimed invention differs from the cited art in that claystone is not disclosed in D1 and that basalt and claystone are not disclosed in D2. These differences do not confer inventiveness because the problem addressed in the present invention, that is, the improvement of nutrient-depleted soils, is the same as that of the cited art. Further, it has not been shown that the selection of basalt, limestone, dolomite and claystone yields better results than the prior art soil additives. Hence, the claims are not inventive.

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VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. Claims 1 and 20 lack clarity with regard to the words "at least". As drafted, the claims include an infinite number of source rocks.
2. Further to item 1 above, the claims are not fully supported by the description (including the abstract). Note that the inventive concept of having at least four source rocks in the soil additive is not clearly described in the specification.